

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

FILED  
U.S. DISTRICT COURT  
DISTRICT OF NEBRASKA

14 APR 10 PM 3: 04

Randall S. Krause, )  
Plaintiff )  
vs. )  
City of Omaha, )  
Defendant. )

OFFICE OF THE CLERK

Case No. 8:14cv94  
**FIRST AMENDED COMPLAINT**

PURPOSE OF AMENDMENT

1. The purpose of this amended complaint is to explain the case more thoroughly. This amended complaint, filed pursuant to Rule 15(a)(1)(A) of the Federal Rules of Civil Procedure, supersedes the original complaint.

PARTIES

2. Plaintiff Randall S. Krause resides in Omaha, Nebraska at the address below.
3. Defendant City of Omaha is a political subdivision of the State of Nebraska.

INTRODUCTION

4. The purpose of this case is to determine if the sand, rock salt, calcium chloride, magnesium chloride, and beet extract ("the materials") that the Defendant applies to streets in the City of Omaha for snow and ice control during the winter season become "solid waste" under 42 U.S.C. §6903 (27) after they have served their intended purpose.
5. 42 U.S.C. §6903 (27) states that "The term 'solid waste' means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 1342 of title 33, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923) (42 U.S.C. 2011 et seq.)."
6. Plaintiff asserts that the materials become solid waste after they have served their intended purpose. Defendant does not acknowledge that the materials become solid waste under the laws of the United States.

7. Plaintiff has an interest in making the Defendant aware of the legal status of the materials after they have served their intended purpose. Plaintiff seeks declaratory relief.

### STATEMENT OF FACTS

#### Solid Materials

8. Defendant applies rock salt and sand to streets in the City of Omaha for snow and ice control. Sand is applied for traction. Salt lowers the freezing point of water and allows snow and ice to melt at temperatures as low as 10° F. Salt granules make their way through the ice to the pavement where they create a brine slush that breaks the ice-pavement bond.
9. Defendant issues specifications that the rock salt supplied by vendors must contain sodium chloride and sodium ferrocyanide.
10. Defendant will accept rock salt from vendors that contains a sulfate concentration of up to 2% by weight.
11. Defendant purchased 52,200,000 pounds of rock salt for the 2007/08 winter season.
12. Defendant purchased 52,740,000 pounds of rock salt for the 2008/09 winter season.
13. Defendant purchased 58,600,000 pounds of rock salt for the 2009/10 winter season.
14. Defendant purchased 76,200,000 pounds of rock salt for the 2010/11 winter season.
15. Defendant purchased 35,000,000 pounds of rock salt for the 2011/12 winter season.
16. Defendant purchased 63,100,000 pounds of rock salt for the 2012/13 winter season.
17. Defendant issued a purchase order for 60,000,000 pounds of rock salt for the 2013/14 winter season.

#### Liquid Materials

18. Defendant manufactures brine with rock salt and water. Calcium chloride, magnesium chloride, and beet extract are added during extreme cold because they lower the freezing point of water even further and make the brine effective at temperatures below 10° F.

19. Defendant distributes brine to all of its street maintenance yards for use during snow and ice control operations.
20. Defendant applies brine directly to dry pavement before a winter storm. The water in the brine evaporates leaving the solutes behind to melt the snow when it falls and prevent an ice-pavement bond.
21. Defendant uses brine to melt thin layers of existing snow and ice, and to prevent slush from refreezing.
22. Defendant applies brine to granular rock salt and sand before spreading those materials on the pavement. Brine minimizes bounce and scatter of the salt and sand as they are spread, and it kick starts the melting process.
23. Defendant issued a purchase order for 10,000 gallons of calcium chloride, 10,000 gallons of a mixture containing magnesium chloride, and 10,000 gallons of beet extract for the 2013/14 winter season.

#### Cleanup Efforts

24. Defendant makes little effort to clean up the materials after they have served their intended purpose.
25. Defendant pushes snow, ice and slush containing some of the materials to the side of the street and off the street where the materials are left to accumulate in the environment.
26. Defendant takes snow, ice and slush containing some of the materials to vacant lots around the City of Omaha where the materials are left to accumulate in the environment.
27. Defendant leaves some of the materials on the pavement after they have served their intended purpose, where they are dispersed in the environment by vehicles, wind and rain.
28. Defendant picks up some of the materials that remain on the pavement with street sweepers in the spring.

#### JURISDICTION AND VENUE

29. Jurisdiction of this Court is asserted pursuant to 28 U.S.C. §1331 and 28 U.S.C. §§2201-02. Proper venue is asserted pursuant to 28 U.S.C. §1391.

RELIEF REQUESTED

30. Plaintiff asks the Court to determine through a declaratory judgment if the materials that the Defendant applies to streets in the City of Omaha for snow and ice control during the winter season become "solid waste" under 42 U.S.C. §6903 (27) after they have served their intended purpose.

EXHAUSTION OF ADMINISTRATIVE PROCEDURES

31. Plaintiff asserts that administrative procedures for declaratory judgments are not available.

TRIAL METHOD

32. Plaintiff requests a trial by judge.

VERIFICATION

33. I declare under penalty of perjury that the foregoing is true and correct.

4/10/2014  
Date Executed

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